

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY - 9 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of Section 73.202(b))

Table of Allotments,)

FM Broadcast Stations)

(Athens and Doraville, Georgia))

MB Docket No. _____

RM- _____

To: Assistant Chief, Audio Division
Media Bureau

**PETITION FOR RULE MAKING
OF COX RADIO, INC. AND CXR HOLDINGS, INC.**

Kevin F. Reed
Christina H. Burrow
Nam E. Kim
DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
(202) 776-2000

Attorneys for Cox Radio, Inc. and
CXR Holdings, Inc.

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SUMMARY

By this Petition for Rule Making (“Petition”), Cox Radio, Inc., and its wholly-owned subsidiary CXR Holdings, Inc. (collectively “Cox”), propose to amend the FM Table of Allotments to provide first local service to a community. Cox proposes to reallocate Channel 238C1 from Athens, Georgia, to Doraville, Georgia, for use by WBTS(FM) as Doraville’s first local service. The proposal would provide first local service to the community of Doraville and maintain local service in Athens. Adoption of Cox’s proposal would achieve a preferential arrangement of allotments under the Commission’s allotment priorities. Accordingly, Cox respectfully requests that the Commission institute a rulemaking to amend Section 73.202(b), the FM Table of Allotments, as proposed herein.

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OF COX RADIO, INC. AND CXR HOLDINGS, INC.**

Cox Radio, Inc., and its wholly-owned subsidiary CXR Holdings, Inc. (collectively "Cox"), by their attorneys and pursuant to Section 1.420(i) of the Commission's Rules,¹ hereby respectfully submit this Petition for Rule Making ("Petition") requesting that the Commission institute a rulemaking to amend Section 73.202(b), the FM Table of Allotments, as proposed herein. By this Petition, Cox proposes to reallocate Channel 238C1 from Athens, Georgia, to Doraville, Georgia, for use by WBTS(FM) as Doraville's first local service.² Grant of the Petition would provide first local service to the community of Doraville and maintain local service in Athens. As demonstrated herein, the proposed reallocation would achieve a preferential arrangement of allotments under the Commission's allotment priorities and would further the public interest.³

¹ 47 C.F.R. § 1.420(i).

² CXR Holdings, Inc. is the licensee of WBTS(FM), Athens, Georgia.

³ See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, *Report and Order*, 4 FCC Rcd 4870, ¶ 25 (1989) ("Community of License R&O"), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("Community of License MO&O"); Revision of FM Assignment

continued...

I. PROPOSED REALLOTMENT OF CHANNEL 238C1 TO DORAVILLE, GEORGIA.

The Petition proposes the reallocation of Channel 238C1 from Athens, Georgia, to Doraville, Georgia for use by WBTS(FM) (the “Doraville Proposal”). The Doraville Proposal squarely meets the Commission’s criteria for grant of a proposed amendment to the FM Table of Allotments. In *Modification of FM and TV Authorizations to Specify a New Community of License*, the Commission stated that it would approve petitions for rule making requesting a change in a station’s community of license without affording other interested parties an opportunity to file competing expressions of interest if (i) the proposed channel is mutually exclusive with the existing channel and (ii) the proposed allotment plan would result in a preferential arrangement of allotments under the Commission’s allotment priorities.⁴ To determine whether a proposal would result in a preferential arrangement of allotments, the Commission compares the proposed allotment plan and the existing state of allotments for the communities involved based on the FM allotment priorities.

As detailed below, the Doraville Proposal satisfies the Commission’s requirements. The proposed allotment of Channel 238C1 at Doraville is mutually exclusive with WBTS(FM)’s present assignment of Channel 238C1 at Athens, Georgia⁵ and would provide Doraville with its first local aural service, invoking Priority 3, while retention of the allotment at Athens would provide an additional aural service to an already well-served community and invoke Priority 4.

...continued

Policies and Procedures, *Second Report and Order*, 90 FCC 2d 88, ¶ 7 (1982). These priorities are (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. The second and third priorities are given equal weight by the Commission.

⁴ *Community of License R&O*, 4 FCC Rcd 4870, ¶ 25 (“[W]e will compare the proposed allotment plan to the existing state of allotments for the communities involved. If adoption of the proposed allotment plan would result in a net service benefit for the communities involved (that is, if the plan would result in a preferential arrangement of allotments), we will adopt the proposal.”). *See also* 47 C.F.R. § 1.420(i).

⁵ *See* Exhibit A (Technical Exhibit by du Treil, Lundin & Rackley, Inc. (“Technical Exhibit”)).

Grant of the Doraville Proposal therefore would achieve a preferential arrangement of allotments. Upon the Commission's grant of the proposal, Cox will timely file an application to operate WBTS(FM) on Channel 238C1 at Doraville.

A. Technical Compliance.

The Doraville Proposal complies with the Commission's technical requirements.⁶ The channel substitution will be made at the existing transmitter site location for WBTS(FM) and, as a result, no gain or loss areas will be created.⁷ The Channel 238C1 Doraville service area will maintain service to 3,350,000 persons over an area of 16,280 square kilometers.⁸ Operation from the proposed site would provide the requisite city grade coverage to Doraville.

Cox notes that WBTS(FM) is a pre-1964 grandfathered short-spaced station with two other stations that operate on third adjacent channels – WPCB-FM (formerly WLTN) and WKLS(FM).⁹ The Commission has permitted pre-1964 grandfathered, short-spaced stations to change their communities of license when no change is made to their transmitter sites or technical facilities because no new short-spacings were created, no existing short-spacings were exacerbated, and the potential for interference between the currently short-spaced stations was not increased.¹⁰ Under this Commission precedent, WBTS(FM) can, therefore, change its community of license to Doraville, Georgia without losing its grandfathered status.

No aural services are assigned to Doraville,¹¹ and accordingly, grant of Cox's Petition would provide Doraville with its first local aural service while Athens would remain served by

⁶ *See id.*

⁷ *See id.*

⁸ *See id.*

⁹ *See id.*

¹⁰ *See, e.g., Kankakee and Park Forest, Illinois*, 16 FCC Rcd 6768 (2001); *Oceanside and Encinitas, California*, 14 FCC Rcd 15302 (1999); *Newnan and Peachtree City, Georgia*, 7 FCC Rcd 6307 (1992).

¹¹ *See* Technical Exhibit.

WFSH-FM, WGAU(AM), WRFC(AM), WXAG(AM) and non-commercial stations WMSL(FM), WUGA(FM) and WUOG(FM), all of which are licensed to Athens.¹²

B. Doraville Is an Independent Community for Allotment Purposes.

Doraville qualifies as a community and warrants a first local service preference. The Commission defines communities as “geographically identifiable population groupings”¹³ and considers whether the social, economic, and cultural organizations located in the community identify themselves with the community.¹⁴

Generally, if a community is located within an urbanized area or the proposed reallocation would cover 50% or more of an urbanized area with a 70 dBu signal, the Commission will conduct the *Huntington* and *Faye and Richard Tuck* analysis (“*Huntington/Tuck* analysis”) to determine whether the proposed community of license is independent of the urbanized area and thus merits a first local service preference.¹⁵ WBTS(FM) currently is licensed to the center city of the Athens Urbanized Area and the existing 70 dBu contour encompasses 134 square kilometers, or 65%, and 73,100 persons, or 69%, of the Athens urbanized area and population and 100% of the Gainesville, Georgia urbanized area and population.¹⁶ WBTS(FM) proposes to change its community of license from Athens to Doraville. However, because no change in the Channel 238CI allotment reference point is proposed, WBTS(FM) will continue to cover 65% and 69% of the Athens urbanized area and population, respectively, and 100% of the Gainesville urbanized area and population after it is reassigned to Doraville. Although the station will cover

¹² See *id.*

¹³ *Strattanville and Farmington Township, Pennsylvania*, 15 FCC Rcd 23848, ¶ 5 (2000).

¹⁴ See, e.g., *id.*; *Dillsboro and Rosman, North Carolina*, 15 FCC Rcd 25562 (2000).

¹⁵ See *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995); *Faye and Richard Tuck*, 3 FCC Rcd 5374 at ¶¶ 1-4 (1988) (“*Tuck*”); *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951).

¹⁶ See Technical Exhibit.

more than 50% of the Athens and Gainesville Urbanized Areas, the Commission does not require a *Huntington/Tuck* analysis in circumstances such as this where a station already covers more than 50% of an urbanized area with a 70 dBu signal and is not proposing to change its transmitter site.¹⁷ Accordingly, in this case, a *Huntington/Tuck* analysis is not required to demonstrate the independence of Doraville from the Athens or Gainesville Urbanized Areas because WBTS(FM) already covers more than 50% of the Athens and Gainesville Urbanized Areas with a 70 dBu signal and is not proposing to change its transmitter site.

WBTS(FM) proposes to change its community of license to Doraville, which is located within the Atlanta Urbanized Area. As noted, the Commission will conduct a *Huntington/Tuck* analysis when a community is located within an urbanized area. Nonetheless, a *Huntington/Tuck* analysis clearly demonstrates that the community of Doraville possesses numerous indicia confirming that it is independent of the Atlanta Urbanized Area and merits a first local service preference.

In evaluating a community's independence, the Commission is guided by the following three factors: (1) signal population coverage, that is, the degree to which the proposed station will provide service to both the suburban community and the larger metropolis; (2) the size and proximity of the suburban community with the metropolis; and (3) the interdependence of the

¹⁷ See, e.g., *Corinth, Scotia and Hudson Falls, New York*, 16 FCC Rcd 13304, ¶ 7 (2001) (stating that a *Tuck* analysis is not required because the reallocation does not involve a site change and the station will provide the same coverage to the urbanized area); *Lampasas and Leander, Texas*, 15 FCC Rcd 6113, ¶ 2 (2000) (same); *Dayton, Incline Village and Reno, Nevada*, 15 FCC Rcd 22461, ¶ 4 (2000) (same).

suburban community with the metropolis, as gauged by a number of indicia.¹⁸ All three factors indicate that Doraville is entitled to a first local service preference.

1. Signal population coverage.

The existing 70 dBu contour of Channel 238C1 at Athens encompasses 1,680 square kilometers, or 33%, and 1,133,000 persons, or 33%, of the Atlanta urbanized area and population. Because there is no change in the Channel 238C1 allotment reference point, the proposed allotment of Channel 238C1 at Doraville will continue to maintain the same (and less than 50%) encompassment of the Atlanta Urbanized Area with a 70 dBu signal.¹⁹

2. Population and proximity in comparison to Atlanta.

The Commission has stated that the requirement of community status is generally satisfied if the proposed community is incorporated and listed in the U.S. Census.²⁰ Doraville is an incorporated city with a population of 9,862 persons according to the 2000 census.²¹ This population represents approximately 2.36% of the population of Atlanta.²² As to proximity, Doraville is located 15 miles from Atlanta.²³ As demonstrated below, Doraville is a substantial community that is separate and distinct from Atlanta. Moreover, the Commission has granted channel change petitions where the proposed community's population as a percentage of that of

¹⁸ *Eatonton and Sandy Springs, Georgia, and Anniston and Lineville, Alabama*, 6 FCC Rcd 6580, ¶ 23 (1991), *appl. for rev. dismissed*, 12 FCC Rcd 8392 (1997), *citing Community of License MO&O*, 5 FCC Rcd 7094 at n. 14. *See also RKO General (KFRC)*, 5 FCC Rcd 3222 (1990); *Tuck*, 3 FCC Rcd 5374 (1988).

¹⁹ *See* Technical Exhibit.

²⁰ *See, e.g., Pontotoc, Tennessee*, 11 FCC Rcd 14430, ¶ 15 (1996) (stating that the proposed community's incorporation and listing in the Census meet the Commission's basic criteria for a community); *Naples, Florida*, 41 RR 2d 1549, ¶ 11 (1977) (stating that the question of community status is "easily answered" "[i]f it is an incorporated community").

²¹ *See* Exhibit B (U.S. Census Bureau <www.census.gov>).

²² Atlanta's population is 416,474 according to the 2000 Census. *Id.*

²³ Distance data was derived from <<http://www.relocate-america.com/states/GA/cities/doraville.htm>>.

the central city was considerably smaller²⁴ and where the community was located far closer to the central city of the urbanized area.²⁵

3. No Interdependence.

A *Huntington/Tuck* analysis of Doraville confirms that Doraville is sufficiently independent of the Atlanta Urbanized Area to justify a first local service preference.²⁶ The Commission has generally held that a community must satisfy only a majority of the factors in the *Huntington/Tuck* analysis to be considered independent for allotment purposes.²⁷ As discussed below, the evidence demonstrates the independence of Doraville from the Atlanta Urbanized Area.

a. Doraville residents consider their community to be separate from Atlanta.

Although Doraville is located near Atlanta, its residents consider themselves part of their own separate community. Doraville was founded in 1871,²⁸ and ever since winning an award in

²⁴ See, e.g., *Kankakee and Park Forest, Illinois*, 16 FCC Rcd 6768 (2001) (finding Park Forest independent of Chicago despite population equal to 0.8% of that of central city); *Ada, Newcastle and Watonga, Oklahoma*, 11 FCC Rcd 16896 (1996) (finding Newcastle independent of Oklahoma City despite population equal to 0.9% of that of central city).

²⁵ See, e.g., *Mullins and Briarcliffe Acres, South Carolina*, 14 FCC Rcd 10516 (1999) (finding Briarcliffe independent of Myrtle Beach Urbanized Area despite only four mile separation); *Bon Air, Chester, Mechanicsville, Ruckersville, Williamsburg, and Fort Lee, Virginia*, 11 FCC Rcd 5758 (1996) (finding Fort Lee independent of Petersburg Urbanized Area despite only three mile separation).

²⁶ *Tuck*, 3 FCC Rcd 5374 at ¶ 36. In *Tuck*, the Commission indicated that it would determine a community's degree of interdependence with a larger urbanized area by analyzing the following factors: (a) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (b) whether the specified community has its own local government and elected officials; (c) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries; (d) whether the smaller community has its own local telephone book provided by the local telephone company or its own zip code; (e) whether the community has its own commercial establishments, health facilities, and transportation systems; (f) the extent to which the community residents work in the larger metropolitan area, rather than the specified community; (g) whether the smaller community has its own newspaper or other media that covers the community's needs and interests; and (h) the extent to which the community and the central city are part of the same advertising market.

²⁷ *Lebanon and Speedway, Indiana*, 2002 FCC LEXIS 6594 (2002); *Parker and Port St. Joe, Florida*, 11 FCC Rcd 1095 (1996).

²⁸ See Exhibit B (Doraville information at <<http://www.co.dekalb.ga.us/doraville.htm>>).

the Better Home Town Contest in 1950, Doraville's motto has been that Doraville is "A Good Place to Live."²⁹ Doraville has numerous non-profit and charitable organizations which provide valuable services to the local community, including family counseling services, housing and care for the disabled, and assistance to the needy,³⁰ as well as nineteen churches.³¹ Doraville also hosts a local chapter of the Fraternal Order of Eagles.³²

Every Thanksgiving, the city of Doraville comes together for the annual Shrine Classic Football Weekend, which is sponsored by the local Shriners and features a parade and football game.³³ Doraville is well-known in the region for its exceptional youth athletic programs.³⁴ The city is home to the Doraville Boxing Club, which has spawned several professional boxers and is a facility where former World Champion Evander Holyfield has trained.³⁵

b. Doraville has its own local government and elected officials.

Doraville has its own City Hall and local government headed by elected Mayor Gene Lively, Vice Mayor Lamar Lang and six elected City Council members.³⁶ Doraville has an annual budget of approximately \$9,000,000³⁷ and has an active city government, especially in the area of land use planning and zoning.³⁸ Doraville is divided into three political districts, with

²⁹ Laura and Ken Barré, *The History of Doraville, Georgia*, 28 (1995). A copy of this book can be made available to the Commission upon request.

³⁰ See Exhibit B (Guide Star Pages at <<http://www.guidestar.org>>).

³¹ See Exhibit B (Church List for Doraville, Georgia at <<http://www.churchangel.com>>).

³² See Exhibit B (Addresses for Doraville Community "Other Organizations" at <<http://www.yahoo.com>>).

³³ Conversation with Laura Berry, editor of *The Doraville Citizen*, on April 17, 2003.

³⁴ *The History of Doraville, Georgia*, 33.

³⁵ *Id.* at 34.

³⁶ Conversation with Mayor Gene Lively on January 28, 2003; conversation with Mary Grant, City Hall, on May 5, 2003. Cox presumes that the web page for the Georgia Municipal Association included in Exhibit B that lists five City Council members is out of date in this respect.

³⁷ Conversation with Mayor Gene Lively on April 22, 2003.

³⁸ See Exhibit B (Brian Feagans, *Club Hopes County Line Can Move*, Atlanta Jnl. and Const., Aug. 29, 2002, at 1JJ.)

two Councilmen elected from each district.³⁹ Doraville also has an appointed City Clerk and an appointed City Attorney.⁴⁰ The Doraville City Council votes on zoning and other local issues.⁴¹ The City of Doraville has a code of ethics, in effect since 1962, that governs all city employees and officials.⁴² Doraville is a member of the Georgia Municipal Association, and Doraville has its own municipal court, presided over by four appointed judges.⁴³ Doraville levies property and occupational taxes on its residents to support city services.⁴⁴

c. Doraville provides extensive municipal services to its residents.

Doraville has its own police department, led by Police Chief John King, with 60 full time officers.⁴⁵ The Department patrols Doraville 24 hours per day and is involved in community outreach programs such as speaking at schools in the community about crime prevention and offering student tours of the department.⁴⁶ Doraville has a public library owned and operated by the city with a full time staff of 6,⁴⁷ and a 19-person maintenance department that maintains all city buildings, vehicles and property and provides city households with trash removal and solid waste removal services.⁴⁸ The maintenance department also provides an animal control service for the city, headed by Animal Control Officer, Dennis Chupp, of the Doraville Police Department.⁴⁹

³⁹ *The History of Doraville, Georgia*, 19 (1995); conversation with Mary Grant, City Hall, on May 5, 2003.

⁴⁰ See Georgia Municipal Association at <<http://www.gmanet.com>>.

⁴¹ Conversation with Mary Grant, Doraville City Hall, on April 15, 2003.

⁴² *The History of Doraville, Georgia*, 30.

⁴³ Conversation with Marcella McElveen, Municipal Court Clerk on May 5, 2003.

⁴⁴ Conversation with Edie Warwick of the Doraville City Hall Tax Clerk Office on April 14, 2003.

⁴⁵ Conversation with Mayor Gene Lively on April 22, 2003.

⁴⁶ Conversation with Laura Berry, editor of *The Doraville Citizen*, on April 17, 2003.

⁴⁷ Conversation with Librarian Joanne Lancaster on March 14, 2003.

⁴⁸ Conversation with maintenance engineer Lynne Stephens on March 20, 2003.

⁴⁹ Conversation with Bobby Peterman, maintenance department, on May 1, 2003.

Doraville has five county-run elementary schools and one middle school located within the city.⁵⁰ The regional public transportation system, MARTA, includes a stop at the Doraville station, in service since 1992.⁵¹ Doraville also provides its residents with extensive recreational services. Doraville is known throughout North Georgia for its youth athletic programs, which include football, cheerleading, baseball, basketball and boxing.⁵² The city has a local community recreation center, known as The Arena, where youth-league football, basketball, and baseball are played. Other programs offered for children include gymnastics, martial arts, ballet and tap dancing, and baton twirling.⁵³ The city has its own recreation director and assistant recreation director.⁵⁴ A community Olympic-size swimming pool is also available at the Arena for Doraville residents.⁵⁵ Doraville sponsors adult recreation and fitness programs and has had adult softball and basketball programs over the years.⁵⁶ The city has over a dozen parks, several of which contain lighted tennis courts. The largest Doraville park is Bernard Halpern Park, named for one of the city's major business developers.⁵⁷

⁵⁰ Conversation with Mayor Gene Lively January 28, 2003.

⁵¹ See Exhibit B (MARTA: Doraville at <<http://www.nycsubway.org/us/atlanta/marta-doraville.html>>).

⁵² *The History of Doraville, Georgia*, 33.

⁵³ *The History of Doraville, Georgia*, 35.

⁵⁴ *Id.* at 34.

⁵⁵ Conversation with Arena staff R. Moseley on April 15, 2003.

⁵⁶ *The History of Doraville, Georgia*, 34.

⁵⁷ *Id.* at 30.

d. Doraville does not have its own discrete zip code.

Doraville shares its three zip codes (30340, 30360, and 30362) with other cities, including Atlanta.⁵⁸ Doraville does, however, have its own local post office.⁵⁹ The fact that Doraville does not have its own zip code is not dispositive of its independence. The Commission considers “a community as independent when a majority of the Tuck factors demonstrate that the community is distinct from the urbanized area.”⁶⁰ Given that the majority of the *Tuck* factors weigh in favor of Doraville’s independence from Atlanta, Doraville’s lack of its own zip code is not significant.

e. Doraville has many commercial establishments and local health care resources.

Doraville has a considerable number of commercial establishments that serve Doraville residents.⁶¹ In 1990 alone, the city issued 1,500 business licenses.⁶² Many of these businesses identify themselves with the Doraville community by using “Doraville” in their name, such as “Doraville Animal Hospital,” “Doraville Auto Sales,” “Doraville Supermarket,” “Doraville Coin Laundry,” and “Doraville Florist.”⁶³ Doraville also has grocery stores,⁶⁴ banks,⁶⁵ drug stores,⁶⁶ and other local businesses.⁶⁷

⁵⁸ See Exhibit B (Zip Code Lookup at <<http://www.usps.gov>>).

⁵⁹ See Exhibit B (Post Office Locator <<http://www.usps.gov>>).

⁶⁰ See, e.g., *St. Augustine and Neptune Beach, Florida*, 16 FCC Rcd 18903, ¶ 5 (2001); *Parker and St. Joe, Florida*, 11 FCC Rcd 1095 (1996).

⁶¹ See Exhibit B (Yahoo! Yellow Pages for Doraville <<http://www.yahoo.com>>).

⁶² *The History of Doraville, Georgia*, 42.

⁶³ See Exhibit B (Page from local BellSouth yellow pages).

⁶⁴ See *id.* (Yahoo! Yellow Pages for Doraville <<http://www.yahoo.com>>).

⁶⁵ See *id.*

⁶⁶ See *id.*

⁶⁷ See *id.*

Doraville also offers its residents health establishments such as a medical care center and a chiropractic clinic.⁶⁸ The Prompt Medical Care Center of Doraville provides healthcare services seven days per week to the community. The Medical Center has one full-time doctor and four medical assistants and provides x-ray, ultrasound and pediatric services in addition to its internal medicine practice. Approximately 7,300 patients are seen by the Center annually.⁶⁹

f. Doraville offers its residents substantial employment opportunities.

Doraville's substantial local business base provides its residents with many employment opportunities. According to the 1990 Census, the vast majority (77%) of Doraville residents over the age of sixteen worked in Doraville or other Metropolitan Statistical Areas ("MSAs") outside of Atlanta.⁷⁰ Major employers in Doraville include General Motors, which recently announced plans to spend \$150 million to upgrade its Doraville plant, thereby preserving approximately 3,600 Doraville jobs.⁷¹ The General Motors plant, which has been part of the Doraville community since it was founded in 1947, has been rated one of the top assembly plants in North America.⁷²

g. Doraville has local media outlets.

Doraville has a community newspaper, the *Doraville Citizen*, which is published and distributed quarterly by the city. The paper features stories concerning local businesses and events, as well as accomplishments of Doraville residents.⁷³ The paper has been published by

⁶⁸ See Exhibit B (Yahoo! Yellow Pages for Doraville <<http://www.yahoo.com>>).

⁶⁹ Conversation with Y. Su, medical assistant, on April 15, 2003.

⁷⁰ See Exhibit B (U.S. Census Bureau <<http://www.uscensus.gov>>). Census information from 2000 does not appear to be available in the detail necessary to make this calculation.

⁷¹ See Exhibit B (Tony Wilbert, *GM Plant to Receive Upgrade*, Atlanta Jnl. and Const., Feb. 4, 2003, at 1D.)

⁷² Tony Wilbert, *Georgia is on the Mind of the Automotive Industry*, Technology & Services, 2002, at 2 (<<http://www.georgia.org>>).

⁷³ Conversation with Laura Berry, editor of *The Doraville Citizen*, on April 17, 2003.

the city since 1975. In addition to the *Doraville Citizen*, local residents have access to the *North DeKalb Neighbor*, one of over 20 newspapers in the Neighborhood Newspaper chain owned by Times-Journal, Inc.⁷⁴ The *North DeKalb Neighbor* is a weekly paper, covering the communities of Doraville, Chamblee and Dunwoody. The paper contains a news section, sports section and people section, which features stories on residents of these communities.⁷⁵

h. Doraville businesses can advertise to residents directly.

Doraville businesses can advertise to residents in the *North DeKalb Neighbor*.⁷⁶

Doraville businesses can also advertise to residents directly through Advo, a weekly direct mail advertising service. Advo can target specific parts of a zip code, so local businesses can advertise directly to Doraville residents without advertising to other communities in and around Atlanta.⁷⁷

In sum, Doraville clearly satisfies the requirements for demonstrating an independent community for allotment purposes under the *Huntington/Tuck* analysis and thus merits a first local service preference. The Doraville Proposal therefore would serve the public interest as it would provide a first local service to Doraville.

II. CONCLUSION

The Petition presents an allotment that would achieve a preferential arrangement of allotments as compared with the current allotment scheme. The Commission has stated, “If adoption of the proposed allotment plan would result in a net service benefit for the communities

⁷⁴ E-mail conversation with Scott Blusiewicz of the Neighbor Newspapers on April 24, 2003.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ E-mail conversation with Elaine Lee of Advo on April 24, 2003.

involved (that is, if the plan would result in a preferential arrangement of allotments), we will adopt the proposal.”⁷⁸

Grant of the Petition would provide Doraville with a first local service and maintain local service at Athens. In contrast, the existing set of allotments provides Athens with more than one local service and does not provide a local service to Doraville. Grant of the Petition would result in a “net gain” of first local service to one community without loss of local service to any other community involved. Accordingly, examination of the Petition according to the FM allotment priorities and resulting public interest benefits clearly weighs in favor of granting the Petition.

⁷⁸ *Community of License R&O*, 4 FCC Rcd 4870, ¶ 25.

III. SUMMARY OF PROPOSED AMENDMENTS TO TABLE OF ALLOTMENTS

In light of the foregoing, the Commission should issue a *Notice of Proposed Rule Making* proposing to implement the following amendments to the FM Table of Allotments:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Athens, GA	238C1, 284C1	284C1
Doraville, GA	----	238C1

Respectfully submitted,

COX RADIO, INC.
CXR HOLDINGS, INC.

By: 

Kevin F. Reed
Christina H. Burrow
Nam E. Kim

Their Attorneys

DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
(202) 776-2000

May 9, 2003

EXHIBIT A

Technical Exhibit of duTreil, Lundin & Rackley, P.C.

TECHNICAL EXHIBIT
PETITION FOR RULE MAKING

Technical Narrative

This Technical Exhibit, of which this Narrative is part, proposes an FM Rule Making to modify the Commission's Table of Allotments contained within Section 73.202 within the Commission's Rules.

All population data, unless otherwise noted, is based upon the 2000 Housing and Population Census. The determination of available reception services was based on the criteria set forth in footnote 1 of the Notice of Proposed Rule Making in MM Docket No. 96-219 (DA 96-1774; adopted October 25, 1996, released November 1, 1996). Urbanized area definitions are based upon the 2000 Census.

Summary of Rule Making Proposal

Below is a summary of the allocation changes requested in the Rule Making.

- Delete 238C1 at Athens, Georgia and allot Channel 238C1 at Doraville, Georgia.

Proposed Channel 238C1 Doraville, Georgia

It is proposed to delete Channel 238C1 at Athens, Georgia allot Channel 238C1 at Doraville, Georgia. Athens would continue to have transmission service from WMSL(FM) on Channel 205C3, WUOG(FM) on Channel 213C2, WUGA(FM) on Channel 219A, WFSH-FM on Channel 284C1, WRFC(AM) on 960 kilohertz, WGAU(AM) on 1340 kilohertz and WXAG(AM) on 1470 kilohertz. The Doraville proposal is mutually exclusive with the current Athens allotment.

No change in site reference coordinates is proposed. Therefore, no loss or gain areas are created. The Channel 238C1 Doraville service area will maintain service to 3,350,000 persons over an area of 16,280 square kilometers. The reference site does not comply with the Commission's minimum distance separation requirements. As noted on Sheet 1 of Figure 1, the two short-spacings are to stations short-spaced pursuant to Section 73.213(a) of the Commission's Rules. Operation from the site will encompass Doraville with the requisite 70 dBu contour.

The existing 70 dBu contour of Channel 238C1 at Athens encompasses 1,680 square kilometers, or 33%, and 1,133,000 persons, or 33%, of the Atlanta urbanized area and population. The existing 70 dBu contour of Channel 238C1 at Athens encompasses 134 square kilometers, or 65%, and 73,100 persons, or 69%, of the Athens urbanized area and population. The existing 70 dBu contour of Channel 238C1 at Athens entirely encompasses the Gainesville, Georgia urbanized area and population.

Since there is no change in the Channel 238C1 allotment reference point, Channel 238C1 at Doraville will continue to maintain the same encompassment of the Atlanta, Athens and Gainesville urbanized areas. The city of Doraville is located within the Atlanta urbanized area.

Below are the Channel 238C1 Doraville reference
site geographic coordinates:

34° 07' 32" North Latitude
83° 51' 32" West Longitude

The city of Doraville has a population of 9,862
persons.

Proposed Modifications to Table of Allotments

This proposal provides for the following
allotment changes to Section 73.202, The Commission's
Table of FM Allotments.

<u>City</u>	<u>Present</u>	<u>Proposed</u>
Athens, GA	238C1, 284C1	284C1
Doraville, GA	----	238C1

Charles A. Cooper

du Treil, Lundin & Rackley, Inc.
201 Fletcher Avenue
Sarasota, Florida 34237
941.329.6000

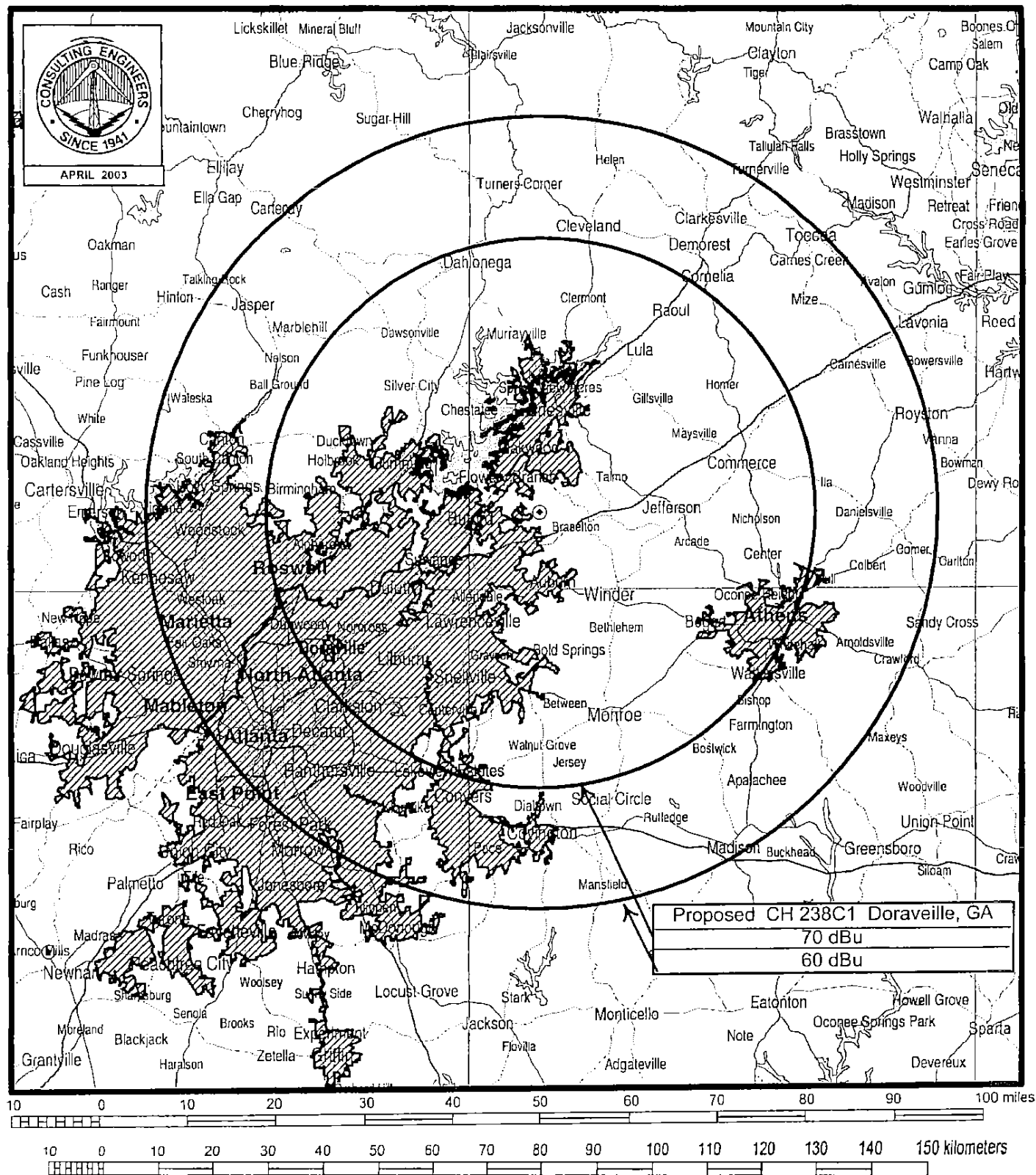
April 10, 2003

TECHNICAL EXHIBIT
PETITION FOR RULE MAKING

Channel 238C1 Doraville, Georgia Allocation Study

34° 07' 32" North Latitude
83° 51' 32" West Longitude

Call Status	City State	FCC File No.	Channel No. Freq.	ERP(kW) HAAT(m)	Latitude Longitude	Bearing deg-True	Dist. (km)	Req. (km)
WPCH	ATLANTA	BLH	235C1	100	33-48-27	231.6	56.82	82.0
29735	GA LIC C	20000413ABM	94.9	298	084-20-27			
(This is a Section 73.213(a) short-spacing to WPCH(FM) at Atlanta, Georgia.)								
DWSRM	COOSA	BPH	237A	3	34-11-41	273.6	137.59	133.0
30623	GA CP C	19900226MD	95.3	100	085-20-55			
900226	COOSA		237A		34-13-54	275.3	138.61	133.0
17224	GA VAC C		95.3		085-21-25			
WBTS	ATHENS	BLH	238C1	74	4-07-32	96.3	0.00	
11710	GA LIC C	20011016AAF	95.5	340	083-51-32			
[Subject station of allocation modification. No allocation concern]								
	HOBSON CITY RM		238A		33-29-30	249.9	200.08	200.0
	AL ADD C bg-99		95.5		085-52-55			
	ASHLAND RM		238A		33-18-30	244.3	205.57	200.0
	AL DEL C bg-99		95.5		085-50-58			
WASZ	ASHLAND	BLH	238A	1.7	33-18-30	244.3	205.57	200.0
52320	AL LIC C	19950621KA	95.5	188	085-50-58			
WATG	TRION	BLH	239A	1.3	34-28-10	286.6	137.75	133.0
67769	GA LIC C	19961009KB	95.7	213	085-17-48			
WKLS	ATLANTA	BLH	241C	100	33-48-27	231.6	56.80	105.0
11275	GA LIC C	19880104KC	96.1	300	084-20-26			
(This is a Section 73.213(a) short-spacing to WKLS(FM) at Atlanta, Georgia.)								
WNGC	TOCCOA	BLH	291C1	100	34-22-40	33.4	33.60	34.0
60810	GA LIC C	20000911ACX	106.1	299	083-39-25			
(Actual separation distance rounds 34 kilometers, therefore, no allocation issue.)								
WNGC	TOCCOA	BPH	291C1	100	34-22-40	33.4	33.60	34.0
60810	GA CP C	20000911AAR	106.1	299	083-39-25			
(Actual separation distance rounds 34 kilometers, therefore, no allocation issue.)								



PROPOSED DORAVILLE 70 dBu & 60 dBu COVERAGE CONTOURS

PETITION FOR RULE MAKING

du Treil, Lundin & Rackley, Inc., Sarasota, Florida